Am. B. R., 349 (South. Dist. Iowa, 1900); *In re Wells*, 5 Am. B. R., 308 (Dist. Court Ark.) Since exemption is a personal privilege of the bankrupt or, in some cases, of his family, failure to exercise this privilege throws the whole estate into the bankruptcy court for administration. *In re Mayer*, 15 Fed. R., 598 (Dist. Ct. Pa., 1883). *Woolfolk* v. *Murray*, 44 Ga., 133 (1870). When, however, the bankrupt has waived this privilege only as to certain of his creditors, he is in effect insisting on it as to the rest, and thereby giving a lawful preference to those for whom he has waived it. It is as though he had first reserved his exemptions as against all creditors, and then given claims against this property to certain creditors.

A recent case, *In re Follett*, 5 Am. B. R., 305 (Dist. Court Tenn., 1900), held that a debtor who had fraudulently transferred property could later take an exemption out of it, when it was returned to the trustee, on the ground that the trustee takes title by Section 70*a* (4) to all fraudulently conveyed property, and hence, the fraudulent transfer was a waiver of exemptions. The element of actual fraud was eliminated from the case by the higher court. *In re Follett*, 5 Am. B. R., 404 (C. C. A., 6th Circ., 1901). Even so the decisions seem to up hold exemptions so long as the rights of a third party have not intervened. *In re Boothroyd*, 1652 Fed. Cases (Dist. Ct. Mich., 1876). *Brackett* v. *Watkins*, 21 Wendell, 68 (N. Y., 1839). That the trustees' taking title is no bar in itself to the bankrupt's later claim to exemptions is shown by the fact that even after the adjudication, at any time before a discharge, the bankrupt may amend his schedules and insert exemptions. *In re Kean*, 7630 Fed. Cases (Dist. Ct. Va., 1873). Consequently, the single fact that property was once transferred by the bankrupt, but later comes to his trustee, especially when the bankrupt himself has caused its return, and succeeded in exculpating himself of all color of fraud, should not suffice to bar his right to exemptions out of the property, *In re Follett*, 5 Am. B. R., 404 (C. C. A., 6th Circ., 1901).

TRUSTS—CHARITABLE BEQUESTS IN NEW YORK.—The recent case of *Racine* v. *Gillet*, N. Y. Law Journal, March 30, 1901, raises the question how far the Laws of 1893 (Chap. 701) have restored the English doctrine of charitable trusts in this State. It was there held by a referee that a bequest, "For the poor of New York," created a charitable fund, to be administered by the Supreme Court for the benefit of the poor; that it was not void for indefiniteness of beneficiaries, and not within the rule against perpetuities. This decision follows *Allen* v. *Stevens*, 161 N. Y., 122 (1899) even to the extent of the *dictum* of PARKER, C. J., that charitable trusts form an exception to the rule against perpetuities (1 COLUMBIA LAW REVIEW, 225). It is in line with the English doctrine that a charitable trust shall not fail for indefiniteness of beneficiaries, and that where there is no *cestui que trust* to come into court, the Attorney-General is to take measures to have the trust enforced. *Attorney-General* v. *Gleg*, 1 Atk., 356 (1738); *Mog-*

gridge v. *Thackwell*, 7 Ves., 36 (1802). But that doctrine went further for, where the object of the trust was so indefinite that it could not be executed by a decree in chancery, the king or the chancellor by virtue of the royal prerogative delegated to him by sign-manual, approximated the intention of the testator and determined for what purposes the trust fund should be applied in accordance with that intention—a rule known as that of *cy près*. It is said that the English doctrine of charitable trusts was shaken by the decision of LORD ELDON in *Morice* v. *Bishop of Durham*, 10 Vesey, 521 (1805), but that case seems to have been decided on the ground that the objects of the testator did not come under the head of "charities," as defined in the Statute of 43 Eliz., C. 4, and hence, was not to be governed by the laws regulating charitable uses and trusts. The decision is inconsistent with the later case of *Musset* v. *Bingle*, Weekly Notes (1876), 170, and is open to criticism (5 Harv. L. Rev., 389). The Supreme Court of the United States has decided that the *cy près* rule does not apply here, as there is no judicial officer vested with the required prerogative, *Fontain* v. *Ravenel*, 17 How., 369 (1854), but several of the States, notably Rhode Island, uphold the doctrine. *Rhode Island Hospital Trust Co.* v. *Olney*, 14 R. I., 449 (1884).

In New York the English doctrine was held to apply to cases of charitable trusts in *Shotwell* v. *Mott*, 2 Sand. Ch., 49 (1844), where it was said that the statutes of New York govern private trusts only. Then came *Williams* v. *Williams*, 8 New York, 525 (1853), which met the objection that the statute of Elizabeth had never been adopted in this country, by saying that this statute had not created the law of charitable trusts, but merely codified it and created new remedies. The decision, however, limited the English doctrine, in that it held, like the case of *Fontain* v. *Ravenel* (*supra*), that the rule of *cy prés* had no place in our law.

From about the year 1856 on, the courts refused to recognize the validity of charitable trusts, holding them void for indefiniteness of beneficiaries, and within the rule against perpetuities, *Owens* v. *Missionary Society*, 14 N. Y., 380 (1856). DENIO, J., who wrote the opinion in *Williams* v. *Williams*, concurred on the ground that the trust could have been sustained only by invoking the rule of *cy prés*. SELDEN, J., page 387, seems to have taken the ground that the statute of Elizabeth was embraced in the general repeal of English statutes in 1788. But see DENIO, C. J., at page 411. The case was followed in many decisions, of which the leading ones are *Levy* v. *Levy*, 33 N. Y., 97 (1865); *Holmes* v. *Mead*, 52 N. Y., 332 (1873), and *Tilden* v. *Green*, 130 N. Y., 29 (1891).

Many valuable bequests to charity having failed, the Legislature passed a law, providing that a gift, bequest or devise to charity, otherwise valid under the laws of New York, shall not be deemed invalid because of indefiniteness of beneficiaries; that the Attorney-General shall represent the beneficiaries, and, if no trustee is named, title to the property shall vest in the Supreme Court (Laws of 1893, Chap. 701). In the recent case of *Allen* v.

Stevens (*supra*), this statute was interpreted as restoring the law as laid down in *Williams* v. *Williams*, thus returning to the English doctrine. The principal case, in addition, intimates that the Supreme Court is by the new law vested with the power of *cy prés*, but this is quite unnecessary to the decision.

CORPORATIONS—ISSUING STOCK BELOW PAR.—In *Donald* v. *American Smelting and Refining Co.* (N. J. Eq., 1901) an action was brought to enjoin the defendants from entering into a contract with M. Guggenheim's Sons, whereby the latter were to receive an issue of new stock of the defendant company to the value of $45,000,000 in return for $12,000,000 cash and the Guggenheim smelting plants, which had an estimated value exclusive of good-will of eight to ten millions. The New Jersey Corporation Act (P. L., 1896, p. 277) provides, § 49: Any corporation formed under the Act may purchase necessary property and "issue stock to the amount of the value thereof in payment therefor." The Court of Errors and Appeals reviwing the decision of STEVENS, V. C., granted the injunction. The statute did not permit the issue of stock below par, and although it declared that in the absence of fraud the judgment of the directors as to the value of the property should be final, this latter applied only to a case where the stock had already been issued. When the question is one of *prevention* and not of *remedy*, the court will enjoin an issue below par, notwithstanding the *bona fides* of the directors. The fact that the contract of purchase was advantageous and caused a rise in the market value of the stock was immaterial, as was also the fact that the comparative values of the plants showed that the purchase might have been for the full market value of the stock issued.

In comparison with the New Jersey statute and the foregoing decision, it is interesting to note the New York law. Section 42 of the Stock Corporation Law as amended 1901 is substantially as follows: "No corporation shall issue either stock or bonds except for money, labor done or property actually received for the use and lawful purposes of such corporation"; stock may be issued to the amount of the necessary property bought, and "in the absence of fraud the judgment of the directors shall be considered conclusive." The Act of 1901 omits the former clause, stating that no stock shall be issued for less than its par value. In *Van Cott* v. *Van Brunt*, 82 N. Y., 535 (1880), the question being as to the liability of shareholders knowingly receiving the stock in payment for work done at a market valuation much below par, the court held that the issue being at the actual value of the stock the defendants were not liable. (See criticism in Morawitz on Corporations, § 826.) In *Gamble* v. *Queens County Water Co.*, 123 N. Y., 91, it was held that an issue below par could be enjoined. The case was distinguished from the previous one because of a different wording of the manufacturing statute, although the fact that the case was one of prevention and not of remedy would seem to have been sufficient